



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2022-0187; FRL-9606-02-R4]

Air Plan Approval; GA; Updates to References to Appendix W Modeling Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of a State Implementation Plan (SIP) revision submitted by the State of Georgia, through the Georgia Environmental Protection Division (GA EPD) on September 1, 2020. Specifically, EPA is finalizing approval of updates to the incorporation by reference of federal prevention of significant deterioration (PSD) new source review (NSR) regulations in the Georgia SIP. Based on the approval of this SIP revision, EPA is also converting the previous conditional approval regarding Georgia's infrastructure SIP's PSD elements for the 2015 Ozone National Ambient Air Quality Standard (NAAQS) to a full approval. EPA is finalizing approval of these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2022-0187. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory

Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Josue Ortiz Borrero, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8085. Mr. Ortiz can also be reached via electronic mail at ortizborrero.josue@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an “infrastructure SIP” or “iSIP.” States were required to submit such SIP revisions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.¹

¹ In infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the

On September 24, 2018, Georgia met its requirement to submit an iSIP for the 2015 8-hour ozone NAAQS by the October 1, 2018, deadline. EPA subsequently approved most of the infrastructure SIP elements for the 2015 Ozone NAAQS for the State.^{2,3} However, regarding the PSD elements of section 110(a)(2)(C), (D)(i)(II) (prong 3), and (J) (hereinafter referred to as element C, Prong 3, and element J, respectively), EPA conditionally approved⁴ these portions of Georgia's iSIP submission because of outdated references to the federal guideline on air quality modeling found in Appendix W of 40 CFR Part 51.⁵

For elements C and J to be approved for PSD, a state needs to demonstrate that its SIP meets the PSD-related infrastructure requirements of these sections. These requirements are met if the state's implementation plan includes a PSD program that meets current federal requirements. Element D(i)(II) (prong 3) is also approvable when a state's implementation plan contains a fully approved PSD program. EPA's PSD regulations at 40 CFR 51.166(l) require that modeling be conducted in accordance with Appendix W, *Guideline on Air Quality Models*. EPA promulgated the most current version of Appendix W on January 17, 2017. *See* 82 FR 5182. Therefore, in order to approve the iSIP PSD elements for the 2015 8-hour ozone NAAQS, PSD regulations in SIPs are required to reference the most current version of Appendix W.

As discussed in the conditional approval for the 2015 ozone iSIP PSD elements, Georgia's SIP contained outdated references to Appendix W, and the State committed to update the outdated references and submit a SIP revision within one year of EPA's final rule conditionally approving these PSD elements. Accordingly, Georgia was required to make its

SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

² For the State of Georgia, EPA approved most elements, except for the Prong 1 and Prong 2 interstate transport provisions, and the PSD provisions (elements C, Prong 3, and J), on March 11, 2020. *See* 85 FR 14147.

³ The Prong 1 and Prong 2 interstate transport provisions for Georgia, were approved on 12/2/2021. *See* 86 FR 68413.

⁴ Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the state fails to meet the commitment within one year of the final conditional approval, the conditional approval will be treated as a disapproval and EPA will issue a finding of disapproval.

⁵ EPA conditionally approved the PSD provisions of element C, Prong 3, and element J on April 15, 2020. *See* 85 FR 20836. The notice of proposed rulemaking associated with the conditional approval provides additional information regarding the CAA's PSD iSIP provisions. *See* 85 FR 7695 (February 11, 2020).

submission by April 15, 2021. Georgia met this commitment by submitting a SIP revision to correct the deficiencies on September 1, 2020.

Through a Notice of Proposed Rulemaking (NPRM), published on March 16, 2022, EPA proposed to approve the September 1, 2020, revision to the SIP-approved PSD rule and proposed to convert the conditional approval to a full approval for Georgia, regarding element C, Prong 3, and element J, for the 2015 8-hour ozone NAAQS infrastructure SIP.⁶ *See* 87 FR 14817. Comments on the March 16, 2022, NPRM were due on or before April 15, 2022. EPA did not receive any comments on the March 16, 2022, NPRM.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Georgia Rule 391-3-1-.02(7), titled “Prevention of Significant Deterioration of Air Quality,” state effective July 29, 2020.⁷ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.⁸

⁶ EPA notes that in the March 16, 2022, NPRM, several references to the Georgia rules incorporated by reference contained typographical errors. References to 391-1-.02(7)(b)(21)(xi) and 391-1-.02(7)(b)9, in the March 16, 2022, NPRM, should have read 391-1-.02(7)(b)21.(xi) and 391-1-.02(7)(b)9. instead. *See* 87 FR 14817, at page 14818. Similarly, in the “Proposed Action” section of the March 16, 2022, NPRM, the reference to Georgia rule 391-1-.02(7), should have read 391-1-.02(7) instead. *See* 87 FR 14817 at page 14819.

⁷ This incorporation by reference excludes the automatic rescission clause at 391-3-1 -.02(7)(a)(2)(iv), and portions of Rule 391-3-1-.02(7) incorporating by reference 40 CFR 52.21(b)(2)(v), and 40 CFR 52.21(b)(3)(iii)(c). *See* 40 CFR 52.570(c).

⁸ *See* 62 FR 27968 (May 22, 1997).

III. Final Action

EPA is finalizing approval of the aforementioned changes to the Georgia Rule 391-3-1-.02(7), *Prevention of Significant Deterioration of Air Quality*. EPA is also converting the conditional approval for element C, Prong 3, and element J, for the 2015 8-hour ozone Infrastructure SIPs to a full approval based on these revisions to the SIP-approved PSD regulations for Georgia.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2) of the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 29, 2022.

Daniel Blackman,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L – Georgia

§ 52.569 [Removed and Reserved]

2. Remove and reserve § 52.569;

3. In § 52.570, in paragraph (c), amend the table by revising the entry for “391-3-1-.02(7);” and in paragraph (e), amend the table by adding an entry at the end of the table for “110(a)(1) and (2)

Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS” to read as follows:

§ 52.570 Identification of plan.

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(c) * * *

EPA Approved Georgia Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*

391-3-1-.02(7)	Prevention of Significant Deterioration of Air Quality (PSD)	7/29/2020	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Except for the automatic rescission clause at 391-3-1 -.02(7)(a)(2)(iv), which EPA disapproved on March 4, 2016. Except for portions of Rule 391-3-1-.02(7) incorporating by reference 40 CFR 52.21(b)(2)(v), and 40 CFR 52.21(b)(3)(iii)(c), because those CFR provisions were indefinitely stayed by the Fugitive Emissions Rule in the March 30, 2011 rulemaking and have not been approved into the Georgia SIP.
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(e) * * * *

EPA-Approved Georgia Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS	Georgia	September 1, 2020	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Addressing the PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(I) (prong 3), and 110(a)(2)(J) only.

